

Superseded 5/12/2015

76-10-532 Removal from National Instant Check System database.

- (1) A person who is subject to the restrictions in Subsection 76-10-503(1)(b)(v), (vi), or (vii), or 18 U.S.C. 922(d)(4) and (g)(4) based on a commitment, finding, or adjudication that occurred in this state may petition the district court in the county in which the commitment, finding, or adjudication occurred to remove the disability imposed.
- (2) The petition shall be filed in the district court in the county where the commitment, finding, or adjudication occurred. The petition shall include:
 - (a) a listing of facilities, with their addresses, where the petitioner has ever received mental health treatment;
 - (b) a release signed by the petitioner to allow the prosecutor or county attorney to obtain the petitioner's mental health records;
 - (c) a verified report of a mental health evaluation conducted by a licensed psychiatrist occurring within 30 days prior to the filing of the petition, which shall include a statement regarding:
 - (i) the nature of the commitment, finding, or adjudication that resulted in the restriction on the petitioner's ability to purchase or possess a dangerous weapon;
 - (ii) the petitioner's previous and current mental health treatment;
 - (iii) the petitioner's previous violent behavior, if any;
 - (iv) the petitioner's current mental health medications and medication management;
 - (v) the length of time the petitioner has been stable;
 - (vi) external factors that may influence the petitioner's stability;
 - (vii) the ability of the petitioner to maintain stability with or without medication; and
 - (viii) whether the petitioner is dangerous to public safety; and
 - (d) a copy of the petitioner's state and federal criminal history record.
- (3) The petitioner shall serve the petition on the prosecuting entity that prosecuted the case or, if the disability is not based on a criminal case, on the county or district attorney's office having jurisdiction where the petition was filed and the individual who filed the original action which resulted in the disability.
- (4) The court shall schedule a hearing as soon as practicable. The petitioner may present evidence and subpoena witnesses to appear at the hearing. The prosecuting, county attorney, or the individual who filed the original action which resulted in the disability may object to the petition and present evidence in support of the objection.
- (5) The court shall consider the following evidence:
 - (a) the facts and circumstances that resulted in the commitment, finding, or adjudication; and
 - (b) the person's mental health and criminal history records.
- (6) The court shall grant the relief if the court finds by clear and convincing evidence that:
 - (a) the person is not a danger to the person or to others;
 - (b) the person is not likely to act in a manner dangerous to public safety; and
 - (c) the requested relief would not be contrary to the public interest.
- (7) The court shall issue an order with its findings and send a copy to the bureau.
- (8) The bureau, upon receipt of a court order removing a person's disability under Subsection 76-10-503(1)(b)(vii), shall send a copy of the court order to the National Instant Check System requesting removal of the person's name from the database. In addition, if the person is listed in a state database utilized by the bureau to determine eligibility for the purchase or possession of a firearm or to obtain a concealed firearm permit, the bureau shall remove the petitioner's name or send a copy of the court's order to the agency responsible for the database for removal of the petitioner's name.

- (9) If the court denies the petition, the petitioner may not petition again for relief until at least two years after the date of the court's final order.
- (10) The petitioner may appeal a denial of the requested relief. The review on appeal shall be de novo.